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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,830	09/17/2003	Alan Phillips	PTG 02-103-12	4882
23531	7590	05/16/2005	EXAMINER	
SUITER WEST SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			CHUKWURAH, NATHANIEL C	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 05/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/664,830

Applicant(s)

PHILLIPS, ALAN

Examiner

Nathaniel C. Chukwurah

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,8,9 and 41-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,8,9,41,42 and 44-48 is/are rejected.
- 7) ☒ Claim(s) 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's arguments, see remarks, filed 4/1/2005, with respect to the rejection(s) of claim(s) 1, 2, 8 and 9 under 102 rejection have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Anderson et al. (US 5,904,285).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 44 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 44 recites "pick-off assembly" in line 2, it is unclear as to what applicant regards as "pick-off assembly" since there is no further description of "pick-off assembly" in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (US 5,904,285).

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With regard to claim 1, Anderson et al. discloses a pinion nail verification assembly (15) comprising: an axle (50) coupled with a nail loading assembly as shown in fig. 1, a pinion (21, 51, 52) coupled with the axle (50) wherein the pinion assembly allows the nail to advance to the nail driving assembly (assembly disposed in nail gun casing) in parallel with axis of rotation (see fig. 2).

With regard to claim 2, Anderson et al. shows a lock (75, 76) assembly with pinion for locking the position of the pinion.

With regard to claim 8, Anderson et al. shows a nail gun selected from the group consisting a pneumatic nail gun (10).

With regard to claim 9, Anderson et al. shows a nail gun deemed to comprise a clutch assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 41-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. in view of Chen (US 6,431,428).

With regard to claim 41, Anderson et al. discloses a pinion nail verification assembly (15) comprising: an axle (50) coupled with a nail loading assembly as shown in fig. 1, a pinion (21) coupled with the axle (50) wherein the pinion assembly allows the nail to advance to the nail driving assembly (assembly disposed in nail gun casing) in parallel with axis of rotation (see fig.

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1). Anderson et al. lacks an adjustable angle magazine. Chen teaches an adjustable angle magazine (20) pivotally mounted to the body of a pneumatic nail gun and can be rotated relative to the barrel of the nail gun to hold and feed another type of nail.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to make the angled magazine of Anderson et al. adjustable in order that it can be rotated relative to the barrel of the nail gun to hold and feed another type of nail (col. 1, lines 36-37; col. 2, lines 49-50).

With regard to claim 42, Anderson et al. shows a lock (75, 76) assembly with pinion for locking the position of the pinion.

With regard to claim 44, Anderson et al. does not expressly disclose a pick-off assembly but deemed to include such feature.

With regard to claim 45, Anderson et al. lacks a pusher. Chen teaches an articulating pusher (32) rotatably mounted on sliding base (30) for pushing nails towards the nail gun barrel (16). Therefore, it would have been obvious to one skilled in the art at the time of the invention to provide the angled magazine of Anderson et al. with an articulating pusher assembly in order that nails are pushed towards the nail discharging barrel.

With regard to claim 46, Anderson shows a nail shank pawl assembly (see figs. 3 and 4).

With regard to claim 47, Anderson et al. shows a pneumatic nail gun (10).

With regard to claim 48, Anderson et al. shows a nail gun deemed to comprise a clutch assembly.

Response to Arguments

Applicant's arguments with respect to claim 1-2, 8, 9, 41-42 and 44-48 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claim 43 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

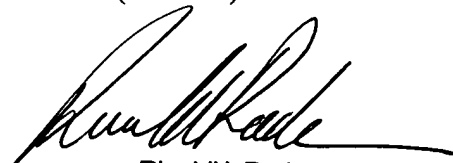
Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC
May 3, 2005.


Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700